

VOTE EXPLANATION

• Mr. RUBIO. Mr. President, I was alerted that someone in my household had been in close contact with several people who have tested positive for Covid-19. In an effort to avoid potentially exposing the passengers and crew on my flight, and my staff and colleagues in the Senate, both myself the member of my household took a PCR test in Florida and are currently awaiting the results.●

ARMS SALES NOTIFICATION

Mr. RISCH. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Arlington, VA.

Hon. JAMES E. RISCH,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-07 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Italy for defense articles and services estimated to cost \$500 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

HEIDI H. GRANT,
Director.

Enclosures.

TRANSMITTAL NO. 21-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Italy.

(ii) Total Estimated Value:

Major Defense Equipment* \$10 million.

Other \$490 million.

Total \$500 million.

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: The Government of Italy has requested to buy articles and services to support the integration of two (2) Airborne Intelligence, Surveillance, Reconnaissance, and Electronic Warfare (AISREW) mission systems onto two (2) Italian Ministry of Defense provided G550 aircraft consisting of:

Major Defense Equipment (MDE):

Four (4) Multifunctional Information Distribution Systems—Joint Tactical Radio System (MIDS JTRS) (2 installed, 2 spares).

Three (3) Embedded/GPS/INS (EGI) with GPS Security Devices, Airborne (2 installed, 1 spare).

Four (4) RIO™ Communications Intelligence Systems (2 installed, 2 spares).

Non-MDE: Also included are Missile Warning Sensors, AN/ALE-47 Countermeasure Dispenser Sets (CMDS), MX-20HD Electro-Optical and Infra-Red systems, Osprey 50 AESA Radars, AISREW ISR equipment, Secure Communications equipment, Identification Friend or Foe Systems, aircraft modification and integration, ground systems for data processing and crew training, ground support equipment, publications and technical data, U.S. Government and contractor engineering, technical and logistics support services, flight test and certification, and other related elements of logistical and program support.

(iv) Military Department: Air Force (IT-D-BAA).

(v) Prior Related Cases, if any: None.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.

(viii) Date Report Delivered to Congress: December 15, 2020.

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Italy—Gulfstream G550 Aircraft with Airborne Intelligence, Surveillance, Reconnaissance, and Electronic Warfare (AISREW) Mission Systems

The Government of Italy has requested to buy articles and services to support the integration of two (2) Airborne Intelligence, Surveillance, Reconnaissance, and Electronic Warfare (AISREW) mission systems onto two (2) Italian Ministry of Defense provided G550 aircraft consisting of: four (4) Multifunctional Information Distribution Systems—Joint Tactical Radio System (MIDS JTRS) (2 installed, 2 spares); three (3) Embedded/GPS/INS (EGI) with GPS security devices, airborne (2 installed, 1 spare); and four (4) RIO™ Communications Intelligence Systems (2 installed, 2 spares). Also included are Missile Warning Sensors, AN/ALE-47 Countermeasure Dispenser Sets (CMDS), MX-20HD Electro-Optical and InfraRed systems, Osprey 50 AESA Radars, AISREW ISR equipment, Secure Communications equipment, Identification Friend or Foe Systems, aircraft modification and integration, ground systems for data processing and crew training, ground support equipment, publications and technical data, US Government and contractor engineering, technical and logistics support services, flight test and certification, and other related elements of logistical and program support. The total estimated program cost is \$500 million.

This proposed sale will support U.S. foreign policy and national security by helping to improve the security of a NATO ally, which is an important partner for political stability and economic progress in Europe.

The proposed sale supports and complements the ongoing efforts of Italy to modernize its airborne Intelligence, Surveillance, Reconnaissance, and Electronic Warfare capability and increases interoperability between the U.S. Air Force and the Italian Air Force (ITAF). Italy will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be L3Harris, Greenville, TX. There are no known offset

agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to six (6) additional U.S. contractor representatives to Italy for a duration of one (1) year to support equipment familiarization.

There will be no adverse impact on U.S. defense readiness resulting from this proposed sale.

TRANSMITTAL NO. 21-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. Missile Warning Sensor (MWS) units are mounted on the aircraft exterior to provide omni-directional protection. The MWS warns of threat missile approach by detecting radiation associated with the rocket motor. The Infrared Missile Warning System (IRMWS) is a small, lightweight, passive, electro-optic, threat-warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provides counter-measures, as well as audio and visual warning messages to the aircrew.

2. Multifunctional Information Distribution System—Joint Tactical Radio System (MIDS JTRS) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

3. The AN/ALE-47 Countermeasure Dispenser Set (CMDS) provides an integrated threat-adaptive, computer controlled capability for dispensing chaff, flares, and active radio frequency expendables. The system is internally mounted and may be operated as a standalone system or may be integrated with other on-board Electronic Warfare (EW) and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes.

4. The Embedded GPS-INS (EGI) is a sensor that combines GPS and inertial sensor inputs to provide accurate location information for navigation and targeting, and can be loaded with crypto-variable keys.

5. Wescam MX-20HD is a gyro-stabilized, multi-spectral, multi-field of view Electro-Optical/Infrared (EO/IR) system. The systems provide surveillance laser illumination and laser designation through use of an externally mounted turret sensor unit and internally mounted master control. Sensor video imagery is displayed in the aircraft real time and may be recorded for subsequent ground analysis.

6. The Osprey family of surveillance radars provides second generation Active Electronically Scanned Array (AESA) surveillance capability as the primary sensor on airborne assets. The Osprey radars are at a high technology readiness level and are in production for fixed and rotary wing applications. This Osprey configuration employs a side-looking radar. Osprey radars provide a genuine multi-domain capability, with high performance sea surveillance, notably against difficult targets, land surveillance with wide swath, very high resolution ground mapping, small and low speed ground target indication, high performance air to air surveillance, tracking and intercept.

7. The AISREW mission systems, to include the RIO™ Communications Intelligence Systems, provide near-real-time information to tactical forces, combatant commanders and national-level authorities

across the spectrum of conflict. The mission system can forward gather information in a variety of formats via secured communications systems. Most hardware used in this system is generic and commercially available. However, if any of the specialized hardware or publications are lost, the information could provide insight into many critical U.S. capabilities. Information gained could be used to develop countermeasures as well as offensive and defensive counter-tactics.

8. The highest level of classification of information included in this potential sale is SECRET.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to Italy.

Mrs. BLACKBURN. Mr. President, I am pleased that we've finally agreed on language to enhance penalties for female genital mutilation, or FGM, a truly horrible practice. I thank my colleagues in the House who worked with me on this issue.

More than 200 million women and girls alive today in 30 countries in Africa, the Middle East, Asia, and the United States have fallen victim to this monstrous practice. Researchers estimate more than 500,000 women and girls in the U.S. have experienced or are at risk of falling victim to FGM.

I introduced legislation on this subject earlier this year, and, although the final language adopted by the House in H.R. 6100 doesn't include the protections I championed in a legally precise manner, it will send a strong message that Congress condemns the violent and disgusting butchery of young girls and women in this country.

Federal law bans the practice of FGM. However, in 2018, a district judge in Michigan found unconstitutional under Commerce Clause grounds the Federal statute banning FGM. Rather than appeal, the Department of Justice's Solicitor General wrote a letter asking Congress to amend the law to address the constitutional problem. I ask unanimous consent that this letter be printed in the RECORD following my remarks.

The bill I introduced in response to this request, S. 2017, the Federal Prohibition of Female Genital Mutilation Act of 2019, fixes the constitutional defects by adding specific commerce clause-focused language to the current law. It is a straightforward change that would make the existing statute consistent with Supreme Court precedent.

The House version of my bill will go a long way in protecting women and girls from FGM, but I remain convinced Congress can and should go even further to prevent this barbarity. Because H.R. 6100 only criminalizes FGM

acts committed for nonmedical reasons, it creates a loophole in the form of a medical benefits defense. Criminal defendants could leverage this defense against their victims by claiming they performed FGM to prevent infections, inflammation, or sexually transmitted diseases, all common excuses in countries where FGM is widespread. Unlike the old law, the burden is now on the government to prove the act was not done for medical reasons. Previously, it was the defendant's burden to prove the act was not medically necessary, per 18 U.S.C. 116(b).

While medical issues are commonly contested in FGM cases, the addition of a new element for the government to prove as part of its case-in-chief makes it tougher to prosecute perpetrators.

Furthermore, section 5 of H.R. 6100 declares that the Michigan district court decision on interstate commerce is erroneous. That language squarely conflicts with the Solicitor General's letter to Congress, which asserts the exact opposite.

A fix-it law should make a defective law better, not introduce new problems or make it easier for defendants to escape accountability. I am disappointed that these concerns were not addressed early on in the legislative drafting process, but I am also optimistic that we will resolve them in a future Congress.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR GENERAL,
Washington, DC, April 10, 2019.
Re *United States v. Jumana Nagarwala et al.*,
No. 17-cr-20274 (E.D. Mich. Nov. 20, 2018)

Hon. DIANNE FEINSTEIN,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: Consistent with 28 U.S.C. 530D, I write to call your attention to the above-referenced decision of the United States District Court for the Eastern District of Michigan. A copy of the decision is attached.

This case is the first federal prosecution under 18 U.S.C. 116(a), which prohibits female genital mutilation (FGM). Section 116(a) makes it a criminal offense to "knowingly circumcise[], excise[], or infibulate[] the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years." Ibid. The district court dismissed the FGM charges, holding that Section 116(a) is beyond Congress's power. First, the court concluded that Section 116(a) is not necessary and proper to effectuate an international treaty under *Missouri v. Holland*, 252 U.S. 416 (1920). The court rejected the government's argument that the provision was rationally related to implementing the United States' obligations under the International Covenant on Civil and Political Rights (ICCPR), done, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368. Second, the court relied on *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), to hold that Section 116(a) was beyond Congress's power under the Commerce Clause. The court found that FGM was not an economic activity but was instead a form of physical assault, and that the statute adding Section 116(a) to the U.S. Code was unaccompanied by detailed, record-based findings from which a court could determine that FGM substantially affects interstate commerce. The court further

emphasized that, unlike many federal criminal statutes, Section 116(a) does not include any jurisdictional elements, such as a requirement that the charged offense have an explicit connection with, or effect on, interstate commerce.

Section 116(a) targets an especially heinous practice—permanently mutilating young girls—that should be universally condemned. FGM is a form of gender-based violence and child abuse that harms victims not only when they are girls, suffering the immediate trauma of the act, but also throughout their lives as women, when it often results in a range of physical and psychological harms. See Act of Sept. 30, 1996, Pub. L. 104-208, Div. C., Tit. VI, §644(a), 110 Stat. 3009-708 (18 U.S.C. 116 note). The Centers for Disease Control and Prevention estimates that half a million women and girls in the United States have already suffered FGM or are at risk for being subjected to FGM in the future. See Howard Goldberg et al., Centers for Disease Control and Prevention, Female Genital Mutilation/Cutting in the United States, 131 Public Health Reports 340 (2016). The Department therefore condemns this practice in the strongest possible terms.

That said, the Department has reluctantly determined that—particularly in light of the Supreme Court's decision in *Morrison*, which was decided after Section 116(a)'s enactment—it lacks a reasonable defense of the provision, as currently worded, and will not pursue an appeal of the district court's decision. Instead, we urge that Congress act forthwith to address the constitutional problem, by promptly enacting the attached legislative proposal, which, in our view, would clearly establish Congress's authority to criminalize FGM of minors and ensure that this practice is prohibited by federal law.

First, the Department has determined that it lacks an adequate argument that Section 116(a), as it is currently written, is necessary and proper to the regulation of interstate commerce. Pursuant to the Commerce Clause, Congress can regulate and protect the channels of interstate commerce, the instrumentalities of interstate commerce, and activities that "substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 17 (2005). Unlike many federal criminal statutes, however, Section 116(a) does not require proof of any nexus between the conduct at issue (performing FGM on minors) and interstate commerce—the critical defect found by the Supreme Court in *Morrison* and *Lopez*. Furthermore, although FGM can be performed in circumstances with commercial characteristics, FGM itself does not appear to be inherently an economic activity, and when performed purely locally, FGM does not appear to be "part of an economic 'class of activities' that have a substantial effect on interstate commerce." Ibid.

Second, the Department has determined that it does not have an adequate argument that Section 116(a) is within Congress's authority to enact legislation to implement the ICCPR, which does not address FGM. None of the ICCPR's provisions references FGM at all. Nor do they provide a basis for the federal government itself (rather than the individual States) to criminalize FGM of minors by private parties. This case is therefore not analogous to *Holland*, which involved a treaty that more directly addressed the parties' obligation to protect certain migratory birds and to propose legislation to do so. See 252 U.S. at 431. Thus, even maintaining the full continuing validity of *Holland*, the Department does not believe it can defend Section 116(a) on this ground.

Although the Department has determined not to appeal the district court's decision, it recognizes the severity of the charged conduct, its lifelong impact on victims, and the importance of a federal prohibition on FGM committed on minors. Accordingly, the Department urges Congress to amend Section 116(a) to address the constitutional issue that formed the basis of the district court's opinion in this case. Specifically, concurrently with submitting this letter, the Department is submitting to Congress a legislative proposal that would amend Section 116(a) to provide that FGM is a federal crime when (1) the defendant or victim travels in or uses a channel or instrumentality of interstate or foreign commerce in furtherance of the FGM; (2) the defendant uses a means, channel, facility, or instrumentality of interstate commerce in connection with the FGM; (3) a payment is made in or affecting interstate or foreign commerce in furtherance of the FGM; (4) an offer or other communication is made in or affecting interstate or foreign commerce in furtherance of the FGM; (5) the conduct occurs within the United States' special maritime and territorial jurisdiction, or within the District of Columbia or a U.S. territory; or (6) the FGM otherwise occurs in or affects interstate or foreign commerce. In our view, adding these provisions would ensure that, in every prosecution under the statute, there is a nexus to interstate commerce.

Please let me know if we can be of further assistance in this matter.

Sincerely,

NOEL J. FRANCISCO,
Solicitor General.

RECOGNIZING THE UNITED STATES AIR FORCE 389TH FIGHTER SQUADRON

Mr. COTTON. Mr. President, the U.S. Air Force's 389th Fighter Squadron—known, respected, and feared around the globe as the Thunderbolts—flew downrange from the 366th Fighter Wing at Mountain Home Air Force Base in Idaho to support Operations Inherent Resolve and Spartan Shield from October 2019 until June 2020. Led by Lt. Col. Rod “Brick” James, the squadron of F-15E Strike Eagles deployed to the United States Central Command area of responsibility for the fight against the Islamic State.

During its historic combat deployment, the T-Bolts employed 263 munitions of myriad types during over 2,600 sorties and a record 13,000 combat hours throughout CENTCOM. Demonstrating the rapid, agile, and lethal characteristics of airpower, the 389th executed close air support for troops in Syria and Iraq. In addition to CAS, the Squadron Weapons section loaded the first Joint Air-to-Surface Standoff Missile, AGM-158, expended in combat by the 366th Fighter Wing, for just one of a host of special missions. All the while a deterrent, the T-Bolts stood ready to defeat Iranian aggression if the call came. Finally, they stayed in the fight 50 percent longer than planned to ensure COVID-19 did not cause any loss of support to those who needed Strike Eagles overhead.

Throughout their deployment, the men and women of the 389th Fighter Squadron and Aircraft Maintenance

Unit performed exceptionally under intense combat pressures executing a new, highly mobile deployment construct during a pandemic. The Thunderbolts represent the best America has to offer. They ride hard, shoot straight, and always speak the truth. I join all grateful Americans in congratulating this outstanding team on a job well done. Banzai.

TRIBUTE TO MARK LEDUC

Ms. COLLINS. Mr. President, I rise to honor a member of my staff, Mark LeDuc, who will soon retire after decades of distinguished service. Mark exemplifies the ideal public servant, demonstrating integrity, thoroughness, a spirit of inquiry, and hard work in every undertaking. Above all, Mark has always demonstrated his belief that it is an honor to serve the people of Maine and our Nation.

Mark was born in New Jersey, but his father's final tour of duty in the U.S. Navy brought the family to Maine, where they were finally home. I first met Mark in 1986 at a campaign event for then-Representative John McKernan, who was running for Governor of the State of Maine. He had recently graduated from a joint degree program at Columbia Law School and the School of Public and International Affairs at Princeton University. He had just moved back to Maine with his wife Marie, whom he had met while they were both studying at Princeton.

Mark and I both went on to work in the Governor McKernan's administration. Mark served as head of the Governor's legislative staff, and I was commissioner of professional and financial regulation in his cabinet. At the time, Maine's workers compensation market was in the midst of a crisis, leading to a 17-day State government shutdown. Mark and I worked closely together on the reform legislation that ended the shutdown and successfully resolved the crisis.

Mark held other roles in State government, but it was during his service in the Governor's office that I first saw and came to appreciate his ability to master complex issues and his dedication to public service.

Mark joined my Senate staff in 2003. He has served in various roles since that time, first in my personal office, then on my Homeland Security and Governmental Affairs Committee staff, and now as chief counsel on my Aging Committee staff. Through the years, Mark has advised me with expertise and thoroughness on a wide range of issues. He served as my lead economic staffer on such legislation as the 2003 tax cuts, the 2008 Troubled Asset Relief Program, the American Recovery and Reinvestment Act, the Dodd-Frank financial regulatory reform legislation, and the Collins capital standards amendment. He also advised me on the economics of the 2010 Patient Protection and Affordable Care Act and later put his knowledge of State insurance

regulation to work when he helped me to draft the Lower Premiums Through Reinsurance Act.

Mark's most significant professional accomplishment may very well be the Paycheck Protection Program that he helped me craft earlier this year. During the devastating COVID-19 pandemic, this program has helped to sustain more than 50 million American jobs, including more than 250,000 jobs in the State of Maine, and I so appreciate the great knowledge and untiring energy he put into this crucial project. It was important, and it helped real people—the small business owners and their employees who are the backbone of communities across our Nation.

Mark has achieved great professional success, but what he is most proud of is his family. Mark and Marie have three daughters: Miriam-Rose, Julie, and Karen. While I am delighted for him that in his retirement he will have more time to spend with the family he loves so dearly, his absence as a member of my staff will be deeply felt.

Mark is a true public servant. He performs his work not for accolades but for a belief in helping people and doing what right. I wish him and his family all the best as they embark on this next chapter.

ADDITIONAL STATEMENTS

RECOGNIZING THE GREAT PLAINS FOOD BANK

• Mr. CRAMER. Mr. President, this has been a challenging year for millions of Americans impacted by the COVID-19 pandemic. Many organizations have stepped up to assist with delivering food, and I want to recognize one North Dakota organization that continues to expand its services to partner with other local organizations reaching out to those in need.

The Great Plains Food Bank has served communities in North Dakota since 1983, regularly dispatching trucks to all 53 counties across the State. With USDA estimates that 27 percent of all food produced in the United States never makes it to the dinner table, the Great Plains Food Bank's mission is to get this surplus food from those who have it to those who need it. It has joined forces with hundreds of food industry partners to recover their surplus shelf-stable and perishable food products. These include local, regional and national growers, processors, manufacturers, retailers, Federal and State government food programs, food drives, and Feeding America, the Nation's food bank network.

The Great Plains Food Bank took a significant step forward last month when it opened a second distribution center, this one in Bismarck, to better facilitate the delivery of food across western and central North Dakota, serving 100 soup kitchens, food pantries, and shelters. This new warehouse now has room for freezers and refrigerators, office space and facilities for volunteers.